



Copyright and Law Librarians' Ethics

by Wes Cochran

Law librarians deal every day with materials protected by copyright in providing information services to their clientele. It is appropriate, therefore, that the AALL Code of Ethics address the use of resources protected by copyright. (The Special Committee on Ethics is considering various issues facing law librarians as it studies revisions to the AALL Code of Ethics. This is the second of several articles on these issues.)

A law librarian has two professional duties concerning copyright materials. The first duty requires serving the client's needs as best we can, using copyright-protected resources when necessary to provide the information requested. The second duty involves respecting the intellectual property rights in the protected works that we use each day. These duties often conflict, leaving many librarians uncertain about which duty to fulfill and which to ignore. The difficulty arises because cases involving the use of intellectual property raise the possibility of liability for infringement for the law librarian's activities, thereby likely subjecting the employer to monetary damages.

Right to Fair Use

A copyright owner's rights are not absolute. The Copyright Act recognizes several exemptions and limitations that allow users of the work to engage in activities, such as making a limited number of copies of the work for educational purposes, that otherwise would require the copyright owner's permission. One of these limitations on the copyright owner's rights is the concept of fair use (17 U.S.C. sec. 107).

The Copyright Act of 1976 recognized this judicially created doctrine for the first time by statute. Fair use permits a person to use copyright protected material in a limited way without the permission of the copyright owner. Whereas the Copyright Act grants to the creator of a work the right to control reproduction and distribution of the work, fair use permits a user of the work to make a personal copy for scholarly and educational purposes, for example.

Fair use remains a fundamental tool for law librarians. Fair use enables us to serve clients efficiently and effectively, but more important, fair use supports the very purpose of copyright—the progress of knowledge to the benefit of society. Copyright is at its essence a limited monopoly—the right to restrict access. Society needs creative efforts to make progress and depends on fair use for access to the works created by those efforts.

Law librarians should be involved in making the most of fair use because it is so vital to us and our profession. This might include joining the fight against attempts to limit or curtail fair use. We owe it our clients and other users of protected material to be ever vigilant. Copyright owners invest large sums of money to lobby Congress for amendments to the Copyright Act—for example, recent attempts to redraft the concept of copyright for particular works, such as electronic database compilations, so that fair use never applies to those works, or does so only in very limited circumstances.

Further, I believe that this duty to our clientele requires us to fight attempts to lengthen the term of copyright. If successful, this would prolong the time before the resource may be used freely by others. Congress has considered several bills in recent years to increase the time period of copyright protection from life of the author plus 50 years, to life of the author plus 70 years.

Rights of Copyright Owners

On the other hand, law librarians also have a duty to respect the rights of copyright owners. The protections of copyright provide an incentive to authors and other creators to develop new works. I know firsthand how royalties can motivate. I am lucky enough to own (or co-own) copyrights in works that have enjoyed some success in the marketplace, and this perspective has given me respect for the rights of those who create new works.

Other library associations agree that information professionals have an ethical responsibility in the area of copyright. The fourth point of the 1995 ALA Code of Ethics, for example, says: "We recognize and respect intellectual property rights." While this clearly indicates support for the copyright owners, it is not clear to all that this statement embraces the rights of users of protected resources.

Revising the AALL Code of Ethics to Incorporate Copyright Issues

This year, the Special Committee on Ethics will consider changes to the existing AALL Code of Ethics. The current AALL Code of Ethics, adopted in 1978, contains no provisions concerning intellectual property. The Committee recognizes the need to deliberate the law librarian's proper role in serving clients and respecting the rights of copyright owners, and, for that reason, I have proposed the following for inclusion in any revisions to the existing Code of Ethics:

We recognize and respect the rights of the owner and the user of intellectual property.

I include the term "owner" to distinguish it from the user of intellectual property because, in many—perhaps most—instances, the owner of a physical copy of a protected work is not the owner of the copyright. I also think it important to go further than the ALA Code of Ethics to explicitly acknowledge the rights of the users of intellectual property. This describes accurately the position that most of us face every day, wanting to fulfill clients' requests quickly while facing the reality of restrictions that copyright often places on us.

The members of the Special Committee on Ethics want all AALL members to join in the consideration of revisions to the Code of Ethics. The next several issues of *AALL Spectrum* will feature one aspect of the revisions that the Committee has before it. If you have comments on any of the concerns expressed here or on other matters that you think the Committee should consider, please contact Margie Axtmann, the Chair of the Special Committee on Ethics, or any of the committee members: Anne Abate, Wes Cochran, Rolph Monaco, or Kay Schlueter.

Wes Cochran (xpjwc@ttacs.ttu.edu) is Director of Texas Tech University School of Law Library in Lubbock, Texas.